

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 9899

IN THE MATTER OF:

Served September 11, 2006

WHEELCHAIR MOBILE TRANSPORT, INC.,)
Suspension and Investigation of)
Revocation of Certificate No. 127)

Case No. MP-2005-186

This matter is before the Commission on respondent's response to Order No. 9689, served June 28, 2006. Order No. 9689 directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 127, for conducting operations under an invalid/suspended certificate of authority in violation of Article XI, Section 6(a), of the Compact and Commission Order No. 9210.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force".¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 127 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 127 was rendered invalid on December 28, 2005, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 9210, served December 28, 2005, noted the automatic suspension of Certificate No. 127 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 127, and gave respondent thirty days to replace the cancelled³ endorsement or face revocation of Certificate No. 127. Respondent submitted a \$1.5 million primary WMATC Insurance Endorsement on January 23, 2006. The effective date of the new endorsement was December 29, 2005, yielding a one-day insurance coverage gap.

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

³ Previous orders erroneously described the endorsement as expired.

Accordingly, Order No. 9543, served May 11, 2006, gave respondent thirty days to furnish proof of having ceased operations as of December 28, 2005. Because respondent's tariff on file with the Commission includes transportation under the District of Columbia Medicaid program and transportation to the general public, the requisite proof was to include corroboration by DC Medicaid and by respondent's general business records.

Respondent subsequently submitted an amended WMATC Insurance Endorsement with an effective date of December 28, 2005, thus eliminating the gap, and confirmation that it has not operated under the DC Medicaid program since December 28, 2005. But respondent's business records show that respondent continued providing for-hire transportation services between points in the Metropolitan District for other clients and that these trips occurred on 115 separate days from December 28, 2005, through May 11, 2006. Given this evidence, Order No. 9689 gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 127 for knowingly and willfully violating the Compact and Order No. 9210.

II. RESPONSE

Respondent no longer denies operating after December 28 but takes issue with the Commission's count of 115 separate days, only admitting to "2 or 3 transfers" in March/April 2006 for one client and "9 transfers per week . . . beginning in April/May 2006" for another. Further, respondent maintains that those trips were not knowingly and willfully in violation of the Compact.

Regarding the number of days respondent operated during the suspension period, respondent's own daily transportation logs show that numerous trips were performed between points in the Metropolitan District during January and February. Indeed, there are only three days in January and four days in February for which no such activity is shown.

As to whether respondent acted knowingly and willfully, we believe respondent misapprehends the meaning of those terms. "Knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁴ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.⁵

Respondent has admitted that about "the middle of November" it became aware that its insurance "would be cancelled on December 28, 2005" because of a change in respondent's ownership. Respondent also admits that it did not check with the Commission to verify that a replacement WMATC Insurance Endorsement had been filed until sometime in January. We find that respondent was careless in not checking with

⁴ *Anna O. Abugusseisa, t/a AB & B Trans*, No. MP-03-50, Order No. 7621 (Dec. 18, 2003).

⁵ *Id.*

the Commission prior to December 28 to verify that the necessary filing had been made.⁶

In addition, the record shows that respondent received a copy of Order No. 9210 no later than January 10, 2006. The order clearly advised respondent that Certificate No. 127 was suspended and that "respondent shall not transport passengers for hire under Certificate No. 127, unless and until otherwise ordered by the Commission." (Emphasis added). Respondent says it "misconstrue[d]" this to mean that respondent could begin operating again once the necessary filing had been made. This is not misconstruction, this is willful misreading.

III. ASSESSMENT OF CIVIL FORFEITURE

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.⁷ Each day of the violation constitutes a separate violation.⁸

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed carriers on probation for one year.⁹ We shall follow the same course here and assess a civil forfeiture of \$250 per day for 115 days, for a total of \$28,750. In light of respondent's cooperation with the Commission's investigation and the absence of any lapse in insurance coverage during the suspension period, we shall suspend all but \$4,000.¹⁰ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$28,750.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against respondent in the amount of \$4,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Commission Order No. 9210, by transporting passengers for hire between points in the

⁶ Cf., Order No. 7621 (carrier careless in failing to verify replacement filing after switching insurance companies).

⁷ Compact, tit. II, art. XIII, § 6(f)(i).

⁸ Compact, tit. II, art. XIII, § 6(f)(ii).

⁹ See *Cheeks & Son Transp., Inc.*, No. MP-04-195, Order No. 8726 (May 19, 2005); Order No. 7621.

¹⁰ See e.g., *In re Zohary Tours Int'l, Inc.*, No. MP-02-46, Order No. 7096 (Mar. 19, 2003) (\$20,750 civil forfeiture reduced to \$10,750 in light of respondent's production of inculpatory evidence); *In re Shirlington Limo. & Transp., Inc.*, No. AP-02-20, Order No. 6709 at 3 (June 21, 2002) (\$35,750 civil forfeiture reduced to \$5,000 in recognition of the absence of any lapse in insurance coverage during suspension period).

Metropolitan District on 115 separate days during the period beginning December 28, 2005, and ending May 11, 2006.

2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of four thousand dollars (\$4,000).

3. That upon timely compliance with the requirements of this order, and provided respondent is in compliance with Commission Regulation No. 58, the Commission shall issue an order reinstating Certificate No. 127, subject to a one-year period of probation. A willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of Certificate No. 127 without further proceedings, regardless of the nature and severity of the violation.

4. That Certificate No. 127 shall be subject to revocation pursuant to Article XI, Section 10(c) of the Compact, and the full forfeiture of \$28,750 assessed in this order shall be immediately due and payable, if respondent fails to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director